

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

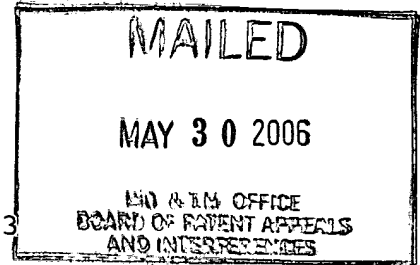
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Ex parte HYEON JUN KIM,  
and JI EUN LEE

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Application No. 09/785,443

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on April 11, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

An Information Disclosure Statement (IDS) was filed on May 9, 2005. A review of the Image File Wrapper reveals that the examiner has not considered the IDS. According to MPEP § 609 which states:

" . . . The Examiner must also fill in his or her name and the date the information was considered in blocks at the bottom of the PTO-1449 or PTO/SB/08A and 08B form."

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On June 10, 2005, appellants filed Appeal Brief. A review of the file reveals that the Appeal Brief is not fully compliance with 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(ix) *Evidence appendix*. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application indicates that the following appropriate sections are missing from the Appeal Brief filed June 10, 2005:

1) "Evidence appendix" as set forth in 37 CFR § 41.37(c)(1)(ix); and

2) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

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A substitute appeal brief that is in compliance with the headings as set forth under 37 CFR § 41.37 are required. For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Additionally, a Reply Brief was received in the office on October 28, 2005 in response to the Examiner's Answer mailed August 29, 2005. However, in accordance with the revision effective September 13, 2004, 37 CFR § 41.43 states:

. . . After receipt of a reply brief in compliance with [37 CFR] § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief ....

A review of the application indicates that the Reply Brief has not been entered into PALM nor has it been considered by the examiner. Correction is required.

Accordingly, it is

**ORDERED** that the application is returned to the examiner:

- 1) for consideration of the IDS filed on May 9, 2005;
- 2) hold the Appeal Brief of June 10, 2005 defective;
- 3) request applicants to file a substitute Appeal Brief, and if necessary, vacate the Examiner's Answer mailed August 29, 2005,

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and issue a revised Examiner's Answer in accordance with the new rules effective September 13, 2004;

4) for consideration of the Reply Brief filed October 28, 2005;

5) to have the Reply Brief filed September 28, 2005 entered into Patent Application Location and Monitoring System (PALM);

6) for written acknowledgment of entry of Reply Brief to the appellants; and

7) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

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DMS/dal

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